

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SHAWN ROSE,)	Case No. 5:09 CV 3011
)	
Plaintiff,)	Judge Peter C. Economus
)	
vs.)	REPORT AND RECOMMENDATION
)	(Regarding ECF # 13)
COMMISSIONER OF)	
SOCIAL SECURITY,)	
)	
Defendant.)	Magistrate Judge James S. Gallas
)	

The complaint in this action was filed on December 31, 2009. The Fact Sheet and Statement of Error were not filed but had been due around May 30, 2010. Plaintiff was ordered to show cause why this matter should not be dismissed under FED. R. CIV. P. 41(b) for failure to prosecute. On July 21, 2010, plaintiff moved to dismiss this case.

Although there is some basis for dismissal of this matter under FED. R. CIV. R. 41(b), as an adjudication for failure to prosecute or comply with court rules, it is recommended considering plaintiff's prompt action in response to the show cause order that plaintiff's motion to dismiss be granted pursuant to FED. R CIV. P. 41(a)(2), as a non-adjudication of this social security appeal.

s/James S. Gallas
United States Magistrate Judge

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of

Court within fourteen (14) days of mailing of this notice. Failure to file objections within the specified time WAIVES the right to appeal the Magistrate Judge's recommendation. *See, United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).